



Resource: Pink Floyd- The Wa

NO ARREST WARRANT
ISSUED,

WARRANT-LESS ARREST

DESPITE PLENTY OF
OPPORTUNITY
TO HAVE ONE ISSUED

SUMMARY OFFENSE, NOT
INDICTABLE

NO REASONABLE GROUNDS
LOST “EXTENSIVE” CRIMINAL
RECORDS OF COMPLAINANT TO
FABRICATE SUSPICION, TURNING
THE TABLES ON ACCUSED

Arrest without warrant

Canada Criminal Code (R.S.C., 1985, c. C-46)

Arrest without warrant by peace officer

495 (1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence.
- (b) a person whom he finds committing a criminal offence; or
- (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

(2) A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 553,
- (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
- (c) an offence punishable on summary conviction,

in any case where

- (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

- (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

- (a) any proceedings under this or any other Act of Parliament; and
- (b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

R.S., 1985, c. C-46, s. 495 R.S., 1985, c. 27 (1st Supp.), s. 75

Date modified: 2022-10-19

<https://laws-lois.justice.gc.ca/eng/acts/C-46/section-495.html>

missing from transcript from the beginning of trial ?

Court: Asks Defendant to swear an oath on the Bible

THURSDAY, JUNE 4, 2009

MS. EBERHARD: The last matter is matter number one, Andrea Armstrong. I wonder if she might be paged, Your Honour.

THE COURT: Please call for Andrea Armstrong.

...PAGING ANDREA ARMSTRONG.

THE COURT: The matter of Andrea Armstrong. Ms. Armstrong, you are conducting your own defence, are you?

ANDREA ARMSTRONG: I'm going to try to. I do have a Rowbotham Application ready to serve, if I need to. Like to reserve the right to serve that one.

THE COURT: Serve what kind of application?

ANDREA ARMSTRONG: A Rowbotham Application for being refused legal counsel and I do not have the means of paying for it because I'm on ODSP.

THE COURT: Do you have the letter of refusal with you?

ANDREA ARMSTRONG: Several. I think that's all.

THE COURT: Have a seat.

ANDREA ARMSTRONG: Is it all right if I have water? I'm on medication that I need to - I've got a bottle here, too.

THE COURT: Bring your application. Just hold those. Do not give them back yet.

ANDREA ARMSTRONG: I did the best I could. I'm not sure if the things are in the right

Defense: *Motion for Counsel*

The judge decides that assault is a simple matter, and then fails to follow any of the court rules himself. The defendant is forced to go ahead with trial despite not accessing legal advice or representation, to correct any of the major legal errors..

Any lawyer would have made a motion to dismiss based on the lack of credibility of the complainant, motivated to conceal her crimes (theft of a cell charger from a child)

If it is so simple why do the lawyers claim they "cannot find anything they did right" ?

Police complaint was "unfounded"

Police Act> in conflict of interest from bottom to top

[Hatton family historically connected to Huffman's]{attach}

2.
Submissions by Ms. Eberhard

places.

THE COURT: We will see. Is the Crown aware of this anticipated application?

MS. EBERHARD: Your Honour, I did not receive any word from Ms. Armstrong, herself, though we did have conversations on the phone and I did hear through duty counsel here that this type of application may be brought. I haven't received any papers of the application. I don't....

THE COURT: Then I will rise for 20 minutes to enable you to review the documentation so you know what sort of position the Crown should take on this.

MS. EBERHARD: Thank you very much.

THE COURT: Twenty minutes. Thank you.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Thank you.

MS. EBERHARD: Thank you, Your Honour, for the time to examine the application before the court. This Crown's position is that we are ready to proceed with trial. We have the constable and the three witnesses here. We are ready to proceed. That being said - and in our - my respectful submission, the issue of assault is, in my respectful submission, fairly simple. However, I do know from my correspondence with Ms. Armstrong that there are other issues that she wishes to bring in

“the issue of assault is ...fairly simple.”

3.
Submissions by Ms. Eberhard
Submissions by Andrea Armstrong

5
10
15
to bear and she has outlined some constitutional issues which, until this date, I have been unaware of. I've consulted some colleagues on this matter and, because it involves binding, basically, if Your Honour grants this application, binding the Attorney General to, basically, pay the costs of a lawyer should one be appointed, that I should get direction from my superiors in our office, that being Mr. Gilkinson. Mr. Gilkinson is in Superior Court trial today. I'm unable to get a hold of him for this matter. So if Your Honour wishes to entertain an adjournment on this application and I can seek some direction from my superiors, that would be appreciated. If Your Honour wishes to proceed, again, the Crown is ready to proceed with the trial proper. I leave it in Your Honour's hands.

20
THE COURT: Thank you. Ms. Armstrong, why is this case so complex that...

ANDREA ARMSTRONG: Well,...

THE COURT: ...counsel should be appointed?

25
ANDREA ARMSTRONG: ...on April 6th, I sent a letter to the Crown Attorney and in the middle of this paragraph, it says, "This letter serves as notice of constitutional issue." Then it took me about....

THE COURT: Under what section?

30
ANDREA ARMSTRONG: Um, well, then it took me time to learn how to do the proper application. Without a lawyer, that was very difficult and then that's when I came up with

4.
Submissions by Andrea Armstrong

5
the other part but that's a letter I sent a
letter I sent them. It's very difficult to
get legal advice so a lot of it's been
Internet law.

10
THE COURT: The Crown, apparently, is not
seeking custody and I am told that this is a
charge of assault level one and the Crown has
three witnesses here on that event. What is
so complex about an assault matter?

15
ANDREA ARMSTRONG: Um, the complexity is that
I was retrieving a stolen item and 90 percent
of her police statements are false and I can
prove that through the Telus text messages
and, technically, she brought - she attacked
me when I went for her bag and she decided
that she would claim assault so that she
wouldn't be detected for the crime of stealing
the phone charger from my 12 year old
daughter.

20
THE COURT: I do not think that is terribly
complex.

ANDREA ARMSTRONG: Well, it is if I - if I'm
not successful in my appeals to you.

25
THE COURT: Thank you.

ANDREA ARMSTRONG: I'd also like to note I've
been doing legal advocacy for 20 years and
I've been trying to go back to school to get
my certification...

30
THE COURT: Yes, well, we will be able to get
into that later.

ANDREA ARMSTRONG: ...and this would greatly
affect that.

R U L I N G

COLLINS, J. (Orally):

5 It should be noted that this is an application
pursuant to R. v. Rowbotham, R-O-W-B-O-T-H-A-
10 M, also under the name of R. v. Robinson,
(1989), 51 CCC, (3d), 452, a decision of the
Court of Appeal. I have the criminal report
series; 73 Criminal Reports, (3d), 81 and the
case indicates that neither public funds nor
judicial resources are limitless, the
15 reallocation of the public resources required
to fund all criminal appeals. Now, that was
an appeal without regard to merit would
represent more than mere administrative
inconvenience. Now, it should be pointed out
20 that that particular case was one of robbery
and related offences where the defendant was
sentenced to 10 years and was wanting to get
assistance of counsel for appeal.

25 Against that backdrop, then we see also the
case of R. v. Rain, R-A-I-N, which is a
decision from (1999), 130 CCC, (3d), 167,
another decision of the Alberta Court of
Appeal. In that particular case, legal aid
had been denied and the court concluded that
30 "When legal aid is denied and exceptional
circumstances make it probable that the trial
judge cannot discharge the duty to ensure a
fair trial then the appointment of counsel
becomes necessary."

6.
Ruling - Collins, J.
Arraignment

One of the principles then is the nature of the charge or charges and regard must be had to the seriousness of the offence, the complexity of the case, the likely length of the trial. The determination of whether counsel is essential must be made on a case by case consideration.

I am of the view on balance that the application of the defendant cannot succeed and we will commence the trial. Thank you.

Would you arraign the defendant, please, Madam Clerk?

COURTROOM CLERK: Andrea Joyce Armstrong, you stand charged that on or about the 10th day of February, 2009 at the City of Peterborough in the County of Peterborough did commit an assault on Rachel Carkner, contrary to the Criminal Code, section 266. The Crown elects to proceed summarily. How do you plead, guilty or not guilty?

ANDREA ARMSTRONG: Not guilty.

THE COURT: Thank you. There should be an order excluding witnesses, I gather, so they cannot hear each other's testimony. The first witness for the Crown is....

ANDREA ARMSTRONG: Can the other Crown witnesses also be reminded not to speak to each other in between...

THE COURT: I am...

ANDREA ARMSTRONG: ...their testimonies.

motion for Counsel:
DENIED

7.
A. Hatton - in-Ch.

PROSECUTION
WITNESSES
WERE NOT
in courtroom
at time.

THE COURT: ...going to that,...

ANDREA ARMSTRONG: Thank you.

THE COURT: ...yes. All witnesses in this matter are not to speak to one other about this and, particularly, when they come out of giving evidence, they are not to speak to any other witness. You will all have to probably have your lunches separate if the case carries on that long. Does everyone understand that? All nodding affirmatively. Your first witness is....

MS. EBERHARD: Police Constable Hatton.

THE COURT: All other witnesses will wait outside. Thank you.

MS. EBERHARD: I will ask Your Honour for an exception that Police Constable Hatton after he has given testimony that he may join me at the counsel table.

THE COURT: I take it, there is no problem about that after he has testified. He will be permitted to remain and assist you...

MS. EBERHARD: Thank you.

THE COURT: ...but not to speak to any of the other witnesses until this matter is finished.

MS. EBERHARD: Thank you.

ANDREW HATTON: SWORN

MS. EBERHARD: Thank you.

30 EXAMINATION IN-CHIEF BY MS. EBERHARD:

Q. Constable Hatton, you are employed by the

Police Officer Testimony: *Andrew Hatton*

8.
A. Hatton - in-Ch.

- what - what police station?

A. The Peterborough-Lakefield Community
Police Service.

Q. Thank you. And how long have you been -
5 been a police officer with that service?

A. It'll be three years this September.

Q. Okay. And were you employed as a police
officer before that?

A. No, I was not.

10 Q. And you're here today in court concerning
a matter - an allegation of something that happened and - and
I understand that you may have had some dealings with this
allegation. If you could tell us your story. In other
words, start from the very beginning and tell us how you
15 became involved with the allegation.

A. Your Honour, may I refer to my notes?

THE COURT: Were they made at the time,
officer?

A. Yes, they were.

20 THE COURT: Any questions from the defendant
on how he recorded his notes?

ANDREA ARMSTRONG: Yeah, well, actually, I
had asked for, um, disclosure on his notebook
'cause I can't read some of the notes and
Staff Sergeant Smith was arguing with me
25 trying to make it seem like I was lying again
but, um, I - I might like to ask for
verification on some of the notes as he goes
through them.

30 THE COURT: Very well. He will be allowed to
refresh his memory from the notes and the
defendant will be entitled to cross-examine

9.
A. Hatton - in-Ch.

him on the notes.

MS. EBERHARD: Thank you, Your Honour.

A. Okay, it was the 10th of February, 2009
and at, uh, 19:26 hours, I was called in to the front desk
5 to, uh, meet the complainant. Uh, it was Andrea Armstrong.

MS. EBERHARD: Q. And the front desk of
where?

A. Of the Peterborough-Lakefield Community
Police Station, 500 Water Street. Ms. Armstrong informed me
10 that, uh, she was there to make a report for a theft of a
cell phone charger. I spoke with Ms. Armstrong at that time
regarding, uh, the charger. I took a detailed description of
it. Uh, it was a black Samsung charger, uh, for a Telus
phone. I asked her if there was any, uh, distinct
15 characteristics about this charger that, uh, she could
provide so that I could assure that the charger was hers and
she could not. Um, I, uh, - I was requested by Ms. Armstrong
to attend over at 217, uh, Murray Street, uh, to speak with
the other half involved here which was Rachel Carkner
regarding the theft. I did so. I spoke with Rachel Carkner.
20 Uh, Rachel informed me that, uh, Andrea had been there
approximately, uh, half an hour before I arrived.

Q. Okay. Did you, in fact, go to 217 Murray
Street?

A. Yes, I did.

25 Q. And what is at 217 Murray Street?

A. It's a warming room.

Q. Can you explain that in greater detail?

A. Uh, it is a, uh, - a room available to the
public, uh, for - I - I should say, not for people without an
30 address because there are people with an address that do use
it but, uh, it's, basically, a, uh, - a public place where

10.
A. Hatton - in-Ch.

they can get a coffee and - and, uh, socialize with other folks.

Q. And this is a public place anybody can come and go...

A. Yes.

Q. ...from this room?

A. Yes.

Q. And when did you arrive at 217 Murray Street?

A. I arrived at 217 Murray at 19:57 hours on the 10th of February.

Q. And what do you observe when you get to the warming room?

A. Uh, when I get to the warming room, what I can recall is, uh, Rachel was visibly upset. She was shakin'. Uh, Tami Taylor or Tami Doherty, however, she may be named....

Q. Are you referring to one person or two people there?

A. It's one person. It's one person that, uh, - I know her as Tami Taylor, uh, who's staff of the warming room was with, uh, Rachel at the time. Rachel informed me of the incident that took place and, uh, Tami confirmed the events of that incident.

Q. Okay. And what did Rachel tell you?

A. Rachel told me that while she was at the warming room, she was seated in front of a computer. Uh, to her right side was her duffle bag which had her personal property in it and, uh, while she was viewing photos on the computer, uh, she heard some yelling and then she felt a push while she was on the chair. Uh, she stated that the push was not strong enough to, uh, remove her from the chair but she

PERJURY
PB Refer to
my notes.
Notebook says
FELL OFF CHAIR

11.
A. Hatton - in-Ch.

did lose her balance. Uh, next, she turned and she had recognized, uh, Andrea Armstrong and that Andrea Armstrong was making a move into her duffle bag and had come up with her wallet and the cell phone charger. Uh, Rachel, at that
5 time, reached over and attempted to stop Andrea from removing her property. Uh, she was able to do so and then she got up and made her way to the women's bathroom. Uh, she was very upset. Uh, I was informed that the staff had to become involved to keep Andrea - Mrs. Armstrong, um, from pursuing
10 Rachel into the bathroom.

Q. Okay.

A. Um, at that time, I believe, uh, Tami Taylor was the first to notify the police of the incident. Uh, as well, while Rachel was in the bathroom, she also made
15 a 911 call to the police. Uh, Rachel told me that, uh, she was concerned that Mrs. Armstrong was coming after her for the cell phone charger so when she went into the woman's bathroom, she took the charger and placed it over the stall wall into an area that, uh, seemed to be a work in progress. It looked like they were putting in a shower or something
20 like that. Uh, Rachel remained in there. Mrs. Armstrong left the area and was, reportedly, seen circling the block and stopping out front for what they appeared to be waiting for Rachel to come back out of the warming room. Um,....

Q. This is all what you were told, not what
25 you saw?

A. This is all - again, this is all the information that I'm collecting through Rachel and through Ms. Taylor.

30 MS. EBERHARD: Thank you. Your Honour, I realize that this is hearsay but I'm not offering it for the truth of its contents,

A. Hatton - in-Ch.

simply as part of the narrative.

THE COURT: Of course not.

MS. EBERHARD: Thank you.

A. Um, with that being said, I, uh, sat down.

5 I spoke with, uh, - with Rachel regarding the cell phone
charger. I asked her if she had stolen it from Mrs.
Armstrong and she had stated, no. She stated that it was her
cell phone charger. Uh, at that time, she also produced a,
uh, Telus cell phone that, uh, was, uh, meant to be with that
10 charger - the charger, then she had also had produced a
receipt from her wallet for the purchase of that cell phone,
uh, from Wal-Mart.

MS. EBERHARD: Q. Okay. And did you make
any - when you spoke with Ms. Carkner, did you make any
observations as to any injuries that may have resulted from
15 the alleged incident?

A. Um, Rachel had shown me, I believe it was
on her right wrist, uh, two fingernail marks that she stated
were a result of, uh, Ms. Armstrong holding onto her right
arm while she was attempting to remove the property from
20 Rachel's, uh, bag.

Q. The two fingernail marks, did you observe
there to be a break in the skin?

A. No, there was no break in the skin. Uh,
minor redness. Rachel did not complain of, uh, - of any
25 injury due to the assault other than, uh, the fact that she
was five months pregnant at the time and had been in and out
of the hospital for about the last five weeks with kidney
problems.

Q. After you received that information from
30 Ms. Carkner and you observed the - the injury,...

A. Uh-hmm.

13.
A. Hatton - in-Ch.

Q. ...what then happened?

A. Uh, I had taken a, uh, - a statement, uh, regarding Rachel's contributions to the incident. Uh, Ms. Taylor also provided a statement regarding what she observed, uh, throughout the incident.

Q. And were those statements written or on video?

A. They were both written.

Q. Then what happened?

A. Uh, due to the nature of the incident, it was reviewed with my sergeant at the time and be it that Ms. Armstrong had requested I investigate the theft, it was determined through my investigation that I could not determine which cell - or who the cell phone charger belonged to. I had located the cell phone charger in the stall area. I had returned that cell phone charger which was a black Samsung charger, as described, to Rachel Carkner. There, again, was no distinguishing characteristics. I had no evidence as to who the owner was. I returned it to the, uh, possession of Ms. Carkner.

Q. What was the sergeant's name who you spoke with when you reviewed the information?

A. It was, uh, Sergeant Loucks - Sergeant Nancy Loucks.

Q. And after you gave the cell phone charger back to Rachel Carkner, then what happened?

A. Rachel was still, uh, very upset regarding the incident and wished to pursue assault charges against Ms. Armstrong for being pushed and for being grabbed, uh, while she was in front of the computer. Uh, I came back to the station. I had uh, telephoned Ms. Armstrong at that time, uh, informed her that she was to remain away from, uh, Rachel

Carkner and that she could meet me the following night at 21:00 hours to discuss the incident, to discuss the investigation.

5 Q. Okay. Before we go to the next night, I ask you if you recall or made any notes about any observations in the warming room of a duffle bag that would have been Ms. Carkner's.

A. Yes, she had the duffle bag with her while I was speaking with her.

10 Q. Okay. Can you tell us approximately the size of the duffle bag?

A. Uh, roughly, I would say a gym bag size. Um, it's hard to say - in a athletic bag. Roughly, I don't know, two feet in length and, uh, a foot deep, foot wide.

15 Q. Okay. So did you meet up with Ms. Armstrong the next night?

A. Uh, yes, I did. I met, um, Ms. Armstrong at the station. At that time, I disclosed to her the outcome of my investigation. Uh, I clearly explained to her that under the circumstances because I could not, uh, - because
20 there were no distinguishing characteristics to the cell phone charger, I could not determine who the cell phone charger belonged to.

Q. And did you find that your information was well received?

25 A. From what I recall, Ms. Armstrong received the information. Um, she wasn't pleased about it and understandably so. Uh, she's made a complaint of theft, uh, which I'm sure she believes. Uh, however, throughout the investigation, I have to base my - my, uh, - my result on
30 evidence that I can find.

Q. Okay.

A. With that being said, I further had to inform her that Ms. Carkner wished to pursue assault charges against her for the incident, uh, that occurred at 217 Murray.

5 Q. And did you have reasonable and probable grounds, at that point, and did you arrest....

A. Yes, I did. So at 21:27 hours on the 11th of February, I informed Ms. Armstrong that she would be under arrest, uh, to the charge of assault, one count. She was
10 given her rights to counsel, caution and right to legal aid which she stated she understood them all. Uh, duty counsel was contacted on her behalf at that time.

Q. Did she speak with duty counsel?

A. Yes, she did. She spoke with, uh, duty
15 counsel, Peter Bedarika(ph).

Q. Then what happened?

A. Uh, in speaking with, uh, Ms. Armstrong, I asked if she wished to provide a statement regarding this incident and, at the time, she declined. Uh, at 22:08 hours, she was released by Sargeant McNevan on a Promise to
20 appear/OIC in Charge Undertaking which carried the conditions at that time, I believe, to notify, uh, our police service any change in address and to remain away and abstain from communicating with Rachel Carkner.

Q. Okay. Did you have any further
25 involvement with this accused concerning the assault allegation before this court after this night?

A. After this night. I, uh, - with the exception of a formal complaint being put in regarding my investigation, uh, I had not received other - other
30 communication. I had received a few phone calls, uh, by Mrs. Armstrong requesting almost what I would consider legal

16.
A. Hatton - in-Ch.
A. Hatton - cr-Ex.

advice and, uh, I told her that I was - I was a police officer and not a lawyer and was unable to provide that for her.

5 Q. Okay. Thank you. I have no further questions.

THE COURT: Cross-examination?

CROSS-EXAMINATION BY ANDREA ARMSTRONG:

10 Q. What post-secondary school do you - what post-secondary education do you have?

A. Post-secondary?

Q. Yeah.

A. I have, uh, a degree from Trent University, uh, joint Major in Economics and Sociology.

15 Q. Have you ever taken any specialized training like breathalyzer tech., statement analysis, you know, tryin' to figure out the validity of witness statements or, uh, stress analysis courses or....

A. No, I have not.

20 Q. Not - you're not certified to do polygraphs or anything like that?

A. No, I don't believe anyone at our service is.

Q. Have you had any other complaints lodged against you in your last three years as a police officer?

25 A. No, I have not.

Q. Have you dealt with Rachel Carkner in any other proceedings or issues including Family Court?

A. I, myself, have not.

30 Q. Do you know what time my call came in to police? Did it not come in before the two 911 calls?

A. I didn't realize you had called. I

was....

Q. I didn't call 911.

A. It....

5 Q. It wasn't a life threatening emergency so
I called the regular number...

A. Okay. I didn't....

Q. ...and asked for police to come and I
called before these ladies did. I was on the phone at the
warming room before they did - they were.

10 THE COURT: Do you know what time that call
came in?

A. No, I do not.

ANDREA ARMSTRONG: Q. At the warming room,
someone is claiming I was driving around the block and,
15 apparently, threatening someone. Exactly what time are they
saying I did this? Right after I left the warming room
before you got there?

A. How I was informed, I did not hear that
you were threatening anyone. I heard that when Rachel went
into the bathroom that you had exited the building to go out
20 for a cigarette, I believe, and, at that point in time, had
got in your vehicle and driven around the block a couple of
times.

Q. Okay, so they're tryin' to say that I was
doing that while I was actually at the police station making
25 a report on theft?

A. I don't know what the actual time was. I
was informed that throughout that course of that incident
through you going in....

Q. Do you know who saw this driving around?

30 A. I believe it was one of our witnesses, be
it Tami Taylor or Mary Lou Green.

Q. My daughter, Chelsea, also produced a phone that fits the charger. Just because she could not claim a Wal-Mart bill for it really didn't give you any reason not to search in to looking into the phone theft charge issue.

THE COURT: Was....

ANDREA ARMSTRONG: Q. I told you at the time....

THE COURT: Was that phone ever presented to you?

A. No.

ANDREA ARMSTRONG: Q. Well, it's obvious it is my daughter's cell phone. It's...

A. Ms.....

Q. ...listed on her name on Telus.

THE COURT: Just a moment. Just a moment. You are saying it was presented. Was it presented to this officer?

ANDREA ARMSTRONG: No, she's 12 years old. She...

THE COURT: Okay,...

ANDREA ARMSTRONG: ...doesn't keep receipts.

THE COURT: ...well, how would you - so you can say that but you will have to do that in your testimony.

ANDREA ARMSTRONG: Yeah.

THE COURT: He cannot answer that as a question, can he? It is outside his knowledge.

ANDREA ARMSTRONG: I....

THE COURT: You will have to ask him questions that he can...

19.
A. Hatton - cr-Ex.

ANDREA ARMSTRONG: Okay, well,...

THE COURT: ...that he can answer - he knows.

ANDREA ARMSTRONG: ...I informed the police
and I informed when I made a complaint that
proof of the cell phone charger theft was on
these text messages and proof of 90 percent of
Carkner's statement can also be discredited by
these text messages which show an electronic
diary of events from the day she stole the
charger and admits to it on here to February
10th and it goes day by day and I have a lady
from Telus out here that is willing to bring
the full documents. I have...

THE COURT: That's....

ANDREA ARMSTRONG: ...the third party
identifier...

THE COURT: That is...

ANDREA ARMSTRONG: ...as one here.

THE COURT: ...why - but you have to ask him
questions of things that he knows.

ANDREA ARMSTRONG: Okay. Anyway. Q. Why
did you not think it was important to summons these documents
which I told you would prove that we were telling the truth?

A. Because, at the time, and, again, how I
had explained this, I have to have evidence that that cell
phone charger is yours. That cell phone charger was in the
possession of Ms. Carkner. There was nothing about that cell
phone charger that I could distinguish to make it yours.

Q. At that time.

A. At that time. I cannot just go up to
somebody and say, 'This - this person has made a complaint of
theft and they have a black Samsung charger that is the same

20.
A. Hatton - cr-Ex.

as that.' I cannot remove that property from someone and give it to somebody else based upon that information.

Q. Anyhow. So what exactly encouraged you to believe her story over, uh, myself and a - my 12 year old daughter?

A. It is not a matter of believing one story or the other. It is a matter of the evidence that I have at hand.

Q. Why did you not ask for the evidence that I told you had in my phone at the time of these text messages?

A. I - the evidence was not available.

Q. I was at the police station. I told you they were in here. I just had to find them and nobody asked them for me again. Anyway. Do you have any past history about me being devious or deceitful to the police or any other authorities?

A. No, I do not.

Q. Then, I guess, you wouldn't happen to know my history of helping and working with the police and crime scene photography and testifying on the stand and all those types of things?

A. Ms. Armstrong, when I'm investigating an incident, I try to keep, uh, people's - or a person's be it jobs, service, volunteer, uh, away from making, uh, an objective decision.

Q. Um, my daughter wanted me - call - I called you later that night when I had been arrested and told you that my 12 year old daughter wanted to make a complaint against assault against me and the theft from Rachel and you refused to get involved or to take that statement. Why would you have done that?

A. Can you repeat that question for me,
please?

Q. Why did you refuse to take an official
statement from my 12 year old daughter who under the law is
5 considered capable of making statements and testifying to
them in regards to the theft and the fact that Rachel first
assaulted me when, in fact, I only went for her bag?

A. That information - there was no complaint
of assault made by you.

10 Q. You didn't call me back that night at
about three or four in the morning and discuss this with me?

A. After the night that you got arrested?

Q. Yes.

A. I believe I did but, no - call you back,
yes, you...

15 Q. Yes.

A. ...had made a call...

Q. We - we discussed...

A. ...to the station first.

Q. ...this - we discussed this...

20 THE COURT: Let him finish...

ANDREA ARMSTRONG: Q. ...on a phone call.

THE COURT: ...his answer, please.

A. Uh-hmm. Um, under the circumstances, you
had made no allegation of assault prior to being arrested or
25 while the theft investigation was going on.

ANDREA ARMSTRONG: Q. Yeah, because there
wasn't an assault. That's why I didn't bring it up. Um,
when I was arrested, you said that there was four witnesses
to this assault. Who are the four people?

30 A. If I had stated there was four, I must
have been mistaken. The witnesses to this assault are Tami

22.
A. Hatton - cr-Ex.

Taylor who was staff at the warming room, Mary Lou Green and Rachel Carkner, the victim.

Q. Okay. I had told you when you arrested me that I had a criminal record, yet, you neglected to find this
5 when it came to the Crown disclosure. Did you think I was making up stories then?

A. I don't recall you disclosing to me that you had a criminal record. However, I am aware that you did attend the police station sometime after that fact and, uh, -
10 and spoke with one of the other members there stating that you thought that I was an incompetent police officer for not knowing that you had a criminal record under your maiden name. I was not aware of your maiden name.

Q. The maiden name was given to you on the sheets that I signed at the police station.
15

A. Well, my mistake again, ma'am.

Q. And also the Crown witness statement - the Crown witness criminal records that I requested were also, uh, done under the wrong people, so who is it that's responsible for those? Is it the Crown or would be the
20 police?

A. Uh, those criminal record checks were done under their, uh, name of birth that would be on their driver's license,...

Q. No.

A. ...Mary Louise Green, Tami Taylor. I also
25 did one under Tami Doherty as per your request and Rachel Alice Carkner.

Q. Bear with me while I find it here.

A. If I could add....

30 THE COURT: No.

ANDREA ARMSTRONG: Q. I don't even know what

I'm looking for anymore. I too confused now.

THE COURT: Sorry, I cannot hear you.

ANDREA ARMSTRONG: I'm not even sure what I'm
looking for now. I'm getting too confused.
What was the questions we were just dealing
with?

THE COURT: It was on the issue of a search
for criminal records of the witnesses.

ANDREA ARMSTRONG: Oh, yeah. It got taken
outta' here this morning and I don't think it
got put back in. Anyhow, I do have a letter
somewhere. I'm sure the Crown probably has it
listing those - those names I gave to you this
morning showing that the wrong names were
searched. Do you have that on you? The names
that were searched was a Kathleen Green and a
Sharon Doherty and those names are not even
close to the witness' names so I've been
failed disclosure on these witness statements.

THE COURT: Are those the names of the
witnesses?

ANDREA ARMSTRONG: No.

MS. EBERHARD: We - what we did, Your Honour,
and I'm going to try and find the - we gave a
list of names of criminal records to search
and we came back with information for all
three. Ms. Green and Ms. Doherty or Ms.
Taylor, same person, had no criminal records.
We couldn't provide my friend with any
information. My friend this morning also
asked for, basically, a variation. Instead of

24.
A. Hatton - cr-Ex.

5 Mary Louise Green, she wanted us to look up
Mary Lou Green. I did that, myself, this
morning. I went into the police station -
10 police office here. We did a search on Mary
Lou Green. We didn't - we - there was - there
are - there were no hits. There's nothing to
provide Ms. Armstrong with, no criminal
record. We also asked for a Tami Taylor-
Doherty as per Ms. Armstrong's request this
morning as we had done Tami Taylor and Tami
Doherty before and, again, nothing came up.
THE COURT: Very well. You next question.
ANDREA ARMSTRONG: What scares me because
they never found mine either. Q. Okay. Only

15 one witness now claims to actually have witnessed an assault
and your other - your - your other witness - one of your
other witnesses has changed her statement already and
discredited herself.

20 THE COURT: Just a moment. Is that a
question?

ANDREA ARMSTRONG: Yeah, hold on.

THE COURT: Well, no, I will not hold on.
You can split up....

ANDREA ARMSTRONG: Q. When you have....

25 THE COURT: Hold it.

ANDREA ARMSTRONG: Sorry.

THE COURT: You have already posed two
possible questions there. He cannot answer a
whole flock of questions. Has one of the
witnesses changed her story and recanted,...

30 A. No.

Q. ...as far as you know?

25.
A. Hatton - cr-Ex.

ANDREA ARMSTRONG: Yes.

A. No, she has not.

THE COURT: All right.

5 A. One witness was, uh, in the area at the
time and overheard the incident, did not witness the assault.

THE COURT: Did....

A. Her statement does not say that she
witnessed the assault. Her statement, uh, - this is Mrs.
Green's statement,...

10 THE COURT: Yes.

A. ...um, uh, gives - gives, uh, information
regarding, uh, Ms. Armstrong's behaviour while at the warming
room.

THE COURT: I see. All right.

15 A. Ms. Taylor's, uh, statement that she has
written, uh, was that she observed the assault take place

THE COURT: All right. Your...

ANDREA ARMSTRONG: Would...

THE COURT: ...question?

20 ANDREA ARMSTRONG: ...you like to have a look
at the notebook entry?

THE COURT: I am not interested in that.

ANDREA ARMSTRONG: Q. Well, the notebook
entry says that mom came in and hit her, said that Rachel had
stole something from her, so she's say - she's making it look
25 like she think I hit her. She's not saying it as hearsay.

A. That is my notebook entry made at the
time, uh, that I'm entering onto a scene. The witness
statements that are provided as written out by Mrs. Green and
Mrs., uh, Taylor would state 100 percent their involvement in
30 this incident.

Q. But just to - for the court to notice that

on this thing, it seems like she is talking because it's mom came in and hit her so, from what I understand, that is a change of story from what was originally said the night of the incident because, from my reporting experience working security, you're not supposed to be putting hearsay in your notebook.

A. Ms. Armstrong,....

Q. You're supposed to be saying what...

THE COURT: Just a moment.

10 ANDREA ARMSTRONG: Q. ...the people said exactly.

THE COURT: Just - are you going to argue with this witness or ask questions?

ANDREA ARMSTRONG: No, I'm ask - try to ask questions.

15 THE COURT: Put another question, please.

ANDREA ARMSTRONG: Q. Did you not think that it was unusual or deceitful for someone to hide an item they claimed ownership and not claim the wallet that she also - not hide the wallet that she also claimed I was trying to get?

20 A. As, again, as it was explained to me by Rachel that you were pulling her wallet and the cell phone charger. She was aware that you were after her cell phone charger. Uh, when she went into the bathroom, she was concerned that if she had the cell phone charger on her that you were gonna' continue to come after her so she explained that, uh, in order for her have you stop pursuing her, she hid the cell phone charger so that you would not try to take it from her.

30 Q. Did you not think that it was unusual for a pregnant alleged assault victim to make the effort to climb

27.
A. Hatton - cr-Ex.

up precariously on a toilet seat reaching beyond my own reach to hide a cell phone charger she claimed was hers on a pipe over the other side of the stall just moments after being allegedly assaulted?

5 THE COURT: The question is did you think this was strange?

A. No, I did not.

THE COURT: Your next question, please.

10 ANDREA ARMSTRONG: Q. If she was so concerned about her unborn child, why would she be balancing herself on a toilet seat and reaching over to an inaccessible area?

A. I cannot answer that question. I'm not Rachel Carkner.

15 Q. Do you not find it suspicious that she felt she needed to conceal the item?

A. No, I don't. I feel that she felt threatened, uh, that someone was trying to take that item from her, so she tried to hide the item so that she wouldn't have somebody pursuing her.

20 Q. Did you ever consider that, maybe, the alleged victim scratched herself in attempt to hide and being detected for the stolen property charge?

A. No, I had not.

Q. Did you ever consider that she may have 25 scratched herself while reaching around to this cut off pipe to hang the pipe charger - the phone charger on it?

A. Ms. Carkner did not complain of having any scratches.

Q. Uh, what are the scratches on her wrist 30 that are in this evidence?

THE COURT: They were simply red marks.

A. Hatton - cr-Ex.

ANDREA ARMSTRONG: Oh.

THE COURT: They were not scratches, I gather.

5 A. Yes, they were fingernail marks is what they appeared to be.

Q. Fingernail marks to me sounds like scratches.

THE COURT: But they did not break the - they did not break the skin.

10 ANDREA ARMSTRONG: Disclosure didn't say that. Q. When a witness or an alleged victim was scratched, how often do you take fingernail scrapings and, uh, put them in for DNA testing?

A. Not very often.

15 Q. 'Cause you didn't ask for my fingernail scrapings and I would have been more than willing to give them to you. So it is possible that she could have scratched herself or scratched herself on the pipe.

THE COURT: Well, that is something you can put in argument at the end of the evidence.

20 ANDREA ARMSTRONG: Q. The address that Carkner furnished you at the time that I was banned from attending, did you realize that she had never lived at that address?

25 A. No, I had not. Uh, Ms. Carkner informed me that the night of the assault, she then went to Peterborough Regional Health Centre and then she was transported to Kingston Hospital. I'm not sure which one it was where she remained until the baby was born, I believe, so she had no time to move into that address.

30 Q. I spoke with the landlord from that address and the landlord said that, uh, Rachel screwed her

P.53
PERJURY
Cop says
she did not
keep in contact

out of two months worth of rent and...

THE COURT: Well, that is....

ANDREA ARMSTRONG: Q. ...when she did get
the thing, it was....

THE COURT: Is the landlord here?

ANDREA ARMSTRONG: No, because I couldn't get
an address to...

THE COURT: Well,....

ANDREA ARMSTRONG: ...subpoena her.

THE COURT: All right. This officer...

ANDREA ARMSTRONG: Anyway....

THE COURT: ...would not know that. That is
not a question.

ANDREA ARMSTRONG: Q. If she had not...

THE COURT: Ask....

ANDREA ARMSTRONG: ...been at that....

THE COURT: Ask questions, please.

ANDREA ARMSTRONG: Okay. Q. If she had not
been at that address, could you not have told me that I was
okay to be by there considering I'm - I'm a block away most
of the time? It would have taken a little bit of my
stress...

A. If Rachel,...

Q. ...off of me.

A. ...the victim of the matter, states to me
that that is her address, then it is common practice for a
police officer to include that address on the Undertaking to
keep the accused away from the victim.

Q. And did she keep in contact with you so
you were able to subpoena her?

A. No.

Q. How were you able to subpoena her then?

P 53 : "did not keep in contact", Impeaches
complainant's testimony

Complainant never has , nor never will live @ the
Park St. address (scammed the landlord, never
took residency)

A. I don't issue the subpoena. I'm not....

Q. Anybody?

MS. EBERHARD: I'm not giving evidence.

ANDREA ARMSTRONG: She must have been subpoenaed somewhere. Be nice to know if she was subpoenaed in handcuffs.

THE COURT: Well, we will find out.

MS. EBERHARD: That's a question that she can put to Ms. Carkner, herself,...

THE COURT: That is right.

MS. EBERHARD: ...when Ms. Carkner gives evidence.

ANDREA ARMSTRONG: Q. How much experience have ya' had of a police officer that would enable you to determine when someone is lying to avoid detection in investigation and charges for committing a crime, themselves?

A. How much experience? Is...

Q. Yeah.

A. ...that the question? Uh, I would say three years of experience in September.

Q. How often does the Peterborough Police Force use polygraphs?

A. I'm not aware that they use polygraphs.

Q. At all?

A. I have never been involved with the use of polygraph.

Q. How many officers do they have that read the validity of statements?

A. I do not know the answer to that question.

Q. In your experience, have you ever known anyone to text a police officer for assistance in retrieving a stolen item only hours later an alleged assault? Do you

➤ It was Never answered: if brought to court involuntarily, or came of her own freewill

think someone would warn a police officer they were gonna' be somewhere at a certain time to collect a stolen item and then go and assault somebody?

THE COURT: I do not understand that...

ANDREA ARMSTRONG: Well,...

THE COURT: ...question.

ANDREA ARMSTRONG: ...it - it works to intent. I did not have any intent to assault anybody. I had - my intent was to go and retrieve a stolen item and I...

THE COURT: All right.

ANDREA ARMSTRONG: ...had text messaged a police officer that I have dealings with...

THE COURT: All right.

ANDREA ARMSTRONG: ... - legitimate dealings with.

THE COURT: Let's just stop. You see, that is about four questions. Did she say that she did not intend to commit an assault but, merely, to retrieve a stolen item? Was that her position?

ANDREA ARMSTRONG: Yes.

THE COURT: I am asking the officer...

ANDREA ARMSTRONG: Sorry.

THE COURT: ...your question. Was that roughly what she - what the defendant told you that she did not intend to assault - commit an assault but, merely, to retrieve an item she said was stolen?

A. Your Honour, I was never informed of that

Ms. Armstrong.

THE COURT: All right. Your next question,

please.

ANDREA ARMSTRONG: Q. Have you ever known anybody to warn a police officer before they go and commit a crime?

A. No, I have not.

Q. So that would speak to intent, I would think. Um, how did you feel about the complaints in regards to your, uh, misconduct that I put in?

THE COURT: How he feels about that is of no relevance to the case.

ANDREA ARMSTRONG: Q. When you arrested me, what was my attitude about being arrested for something? Was I surprised, shocked?

A. I would say you were somewhat surprised,

yes.

Q. Uh, was I expect - I was expecting to pick up a phone charger at the time and I did not, did I?

A. No, you were not expected to pick up a phone charger at that time.

Q. And I had my two children with me, as well,...

A. You....

Q. ...at the time.

THE COURT: Just let him - do not interrupt his answers, please.

A. Uh, it was scheduled that we - we would meet to discuss, uh, the outcome of the investigation for theft.

ANDREA ARMSTRONG: Q. So, obviously, I had no idea I was being investigated for assault when I show up at the police station with my kids and, obviously, had no idea I was being arrested.

THE COURT: Well, he cannot answer that. Did she show up with two kids?

A. Yes, she did.

5 ANDREA ARMSTRONG: Q. Did I also explain to you at that time that I didn't understand the charges because the only thing that you could have charged me with was causing a disturbance for the yelling that I did?

A. Under the circumstances, the evidence that I had received from the parties involved here was that of a
10 charge of assault.

Q. And how often do you usually go ahead and prosecute charges when there's actually only one witness who witnessed any kind of physical....

15 THE COURT: Well, I think his evidence so far has been that there were three witnesses; one of whom only heard what was going on, another one who visually saw and then the complainant, herself, so your question simply does not fit the evidence we have heard so far, so your next questions, please.

20 ANDREA ARMSTRONG: I think that's about it.

THE COURT: Any re-examination?

ANDREA ARMSTRONG: I may wanna' call him again later.

25 THE COURT: Any re-examination?

MS. EBERHARD: No.

THE COURT: Thank you, officer. You may step down. We will take our morning recess at this moment. It will be 20 minutes. Thank you.

30 R E C E S S

THE COURT: Well, he cannot answer that. Did she show up with two kids?

A. Yes, she did.

5 ANDREA ARMSTRONG: Q. Did I also explain to you at that time that I didn't understand the charges because the only thing that you could have charged me with was causing a disturbance for the yelling that I did?

A. Under the circumstances, the evidence that I had received from the parties involved here was that of a
10 charge of assault.

Q. And how often do you usually go ahead and prosecute charges when there's actually only one witness who witnessed any kind of physical....

15 THE COURT: Well, I think his evidence so far has been that there were three witnesses; one of whom only heard what was going on, another one who visually saw and then the complainant, herself, so your question simply does not fit the evidence we have heard so far, so your next questions, please.

20 ANDREA ARMSTRONG: I think that's about it.

THE COURT: Any re-examination?

ANDREA ARMSTRONG: I may wanna' call him again later.

25 THE COURT: Any re-examination?

MS. EBERHARD: No.

THE COURT: Thank you, officer. You may step down. We will take our morning recess at this moment. It will be 20 minutes. Thank you.

30 R E C E S S